

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LUIS ALBERTO ULLOA MARTINEZ,)	
)	
Petitioner,)	Case No. C09-456-RSM
)	
v.)	
)	ORDER OF DISMISSAL
STEVE SINCLAIR,)	
)	
Respondent.)	
)	

This matter comes before the Court upon Petitioner Luis Alberto Ulloa Martinez's objections to the Report and Recommendation ("Report") of the Honorable James P. Donohue, United States Magistrate Judge. Dkt. # 58. Petitioner contends that the Report's recommendations concerning Petitioner's ineffective assistance of counsel claim derives from a misapprehension of the facts. Specifically, Petitioner argues that the Magistrate Judge improperly considered only trial counsel's decision to not raise the alibi defense at trial. Petitioner contends that the Magistrate Judge should have considered trial counsel's failure to investigate the alibi defense when facts relating to it were obtained during discovery. Dkt. # 58, p. 3. *Strickland v. Washington*, 466 U.S. 668 (1984) requires Petitioner to show a deficiency in trial counsel's performance, and that counsel's deficient performance prejudiced the outcome of trial. *See id.* at 687-88. The Washington Court of Appeals found, on direct review, that Petitioner could not demonstrate

1 prejudice because there was overwhelming evidence of guilt. Petitioner has failed to satisfy both
2 prongs. Petitioner has also failed to show that the Washington Court of Appeals was unreasonable
3 in its denial of Petitioner's ineffective assistance of counsel claim as required under 28 U.S.C. §
4 2254(d)(1)-(2).

5 The Court, having reviewed petitioner's amended 28 U.S.C. § 2254 petition for writ of
6 habeas corpus, the Answer, the parties' briefing, the governing law, sealed state-court records
7 reviewed *in camera*, the balance of the record, the Report and Recommendation of United States
8 Magistrate Judge James P. Donohue, and the objections and response and reply thereto, does
9 hereby find and ORDER:

- 10 (1) The Report and Recommendation is ADOPTED;
- 11 (2) Petitioner's habeas petition is DENIED and this matter is DISMISSED with
12 prejudice;
- 13 (3) Petitioner is DENIED issuance of a certificate of appealability;
- 14 (4) The Court will return the sealed state-court records held in chambers to the
15 Washington Court of Appeals; and
- 16 (5) The Clerk of Court is directed to send copies of this Order to petitioner and to
17 Magistrate Judge James P. Donohue.

18 DATED this 28 day of January 2013.

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21 RICARDO S. MARTINEZ
22 UNITED STATES DISTRICT JUDGE
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